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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,370	07/18/2003	Zane Vella	021572-000210US	4363
7590 Charles J. Kulas, Esq. Carpenter and Kulas LLP Suite 109 1900 Embarcadero Rd. Palo Alto, CA 94303				
EXAMINER				
CAMPBELL, JOSHUA D				
ART UNIT		PAPER NUMBER		
2178				
MAIL DATE		DELIVERY MODE		
04/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Non-Responsive Amendment

1. The request for reconsideration filed on 1/20/2009 with the amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because inventions I (original invention - claims 1-3, 5, 49, 51, 54-57, 60-65, 69-72, 75-80, 84-87, and 90-92) and II (new claims - 93-106) are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as resizing displayed elements in order to display a message indicator to allow a user to select and view a message and subcombination II has separate utility such as providing the automatic display synchronized text messages during DVD playback. See MPEP § 806.05(d).
2. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:
 - (a) the inventions have acquired a separate status in the art in view of their different classification;
 - (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

3. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. **Accordingly, claims 93-106 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. The applicant has cancelled claims 1-3, 5, 49, 51, 54-57, 60-65, 69-72, 75-80, 84-87, and 90-92, thus no claims remain for examination based on the constructive election, making this response non-responsive.**

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the

inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA D. CAMPBELL whose telephone number is (571)272-4133. The examiner can normally be reached on M-F (7:30 AM - 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hong can be reached on (571) 272-4124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joshua D Campbell/
Primary Examiner, Art Unit 2178
April 20, 2009